Submission to:

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry
Response to Counsel Assisting's further submissions and the Draft Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry

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1. ABOUT NHC INFRASTRUCTURE CONSULTING

1. NHC Infrastructure Consulting (NHC) is an independent specialist advisory practice working across commercial advisory, procurement architecture, contract support and supplier capability uplift within Australia's infrastructure sector.
2. NHC works with infrastructure clients, contractors, consultants, government agencies, social enterprises, Aboriginal and Torres Strait Islander businesses, local small and medium enterprises (SMEs), and emerging suppliers. Its work focuses on the practical interface between procurement policy, buyer requirements, commercial and governance obligations, supplier capability and infrastructure delivery.
3. NHC is founded and led by Narelle Hinchcliffe, MBA, who was raised on Queensland's Gold Coast and has longstanding personal and professional connections to Queensland. She has more than 25 years' experience across infrastructure delivery, asset operations and regulated environments, spanning government, contractor, alliance, public-private partnership and traditional contracting models.
4. Her professional experience includes procurement strategy, tendering, contract formation and administration, upstream and downstream commercial governance, supplier engagement, risk management, claims and dispute support, and the integration of local, social and Aboriginal procurement objectives within major infrastructure delivery environments. Relevant Queensland experience includes Cross River Rail (Tunnel, Stations and Development), Brisbane Airport Link and the Kingsford Smith Drive Upgrade.
5. This experience provides NHC with visibility of both sides of the procurement process:
    a. the buyer's need for credible, compliant and delivery-ready suppliers; and
    b. the practical constraints experienced by smaller suppliers seeking to demonstrate capability and participate in complex government and major-project supply chains.

2. SCOPE AND POSITION OF THIS SUBMISSION

6. NHC makes this submission independently. It does not represent any client, contractor, union, industry association or supplier group.
7. NHC does not seek to comment on the broader industrial-relations dispute before the Commission, the conduct of any particular organisation, or the merits of particular enterprise-agreement conditions.
8. NHC also does not express a view in this submission on whether a new Code and independent regulator should ultimately be introduced.
9. The submission is confined to a narrower commercial and procurement question:

    If the proposed framework is introduced, will it preserve a clear, proportionate, and practically usable pathway into government-funded construction work for capable SMEs, local businesses, social enterprises, and Aboriginal and Torres Strait Islander businesses?

10. NHC supports appropriate standards of lawful conduct, safety, integrity, probity, productivity and commercial accountability. The issue is not whether smaller suppliers should be subject to lower standards. It is whether the responsibilities for meeting those standards are clearly defined, appropriately allocated, and capable of being administered by parties with materially different roles, resources, and levels of control.

3. CENTRAL PROPOSITION

11. NHC's central proposition is:

    Formal eligibility does not necessarily create a usable supplier pathway.

12. Queensland's existing transport infrastructure procurement framework itself recognises this distinction. The Transport Infrastructure Project Delivery System (TIPDS), published by the Department of Transport and Main Roads (TMR), states that prequalification is not a guarantee of work and only determines eligibility to tender.

13. TMR guidance also recognises that procurement settings which are pitched too high can reduce competition, exclude competent local suppliers, restrict the market, reduce development opportunities and discourage smaller contractors from participating.

14. This does not mean that existing Queensland procurement arrangements are inherently exclusionary. To the contrary, Queensland procurement policy and TMR guidance recognise local, SME and Indigenous participation as legitimate procurement objectives. [1]

15. It does mean that an additional compliance framework should be assessed across the whole supplier pathway. It is not sufficient to ask only whether a supplier remains technically eligible. It is also necessary to consider whether the supplier can:

    a. identify that the Guidelines apply;
    b. understand which obligations apply to its role;
    c. obtain the information and authority required to comply;
    d. price and resource the compliance obligation;
    e. demonstrate compliance through proportionate evidence; and
    f. accept the resulting contractual risk without assuming responsibility for matters outside its control.

[1] Queensland Department of Transport and Main Roads (TMR), Transport Infrastructure Project Delivery System (TIPDS), Volume 3 – Requirements (November 2024), s 8.2, p 20; TIPDS Volume 1 (March 2025), ss 2.3.1–2.4 and 8.4, pp 9–12 and 33.

4. DOWNSTREAM COMPLIANCE AND RISK ALLOCATION

4.1 The Draft Guidelines create a strong flow-down architecture

16. Sections 2.2, 2.4 and 5 of the Draft Guidelines create an extensive downstream compliance structure.

17. Section 2.2 requires relevant contractual documents to incorporate warranties from head contractors, subcontractors, other contractors, consultants and related entities, as applicable, to comply with all aspects of the Code and Guidelines.

18. It also requires contractual consent to government inspection, document access and interviews, and requires head contractors to ensure that subcontractors allow regulatory monitoring and investigation.

19. Section 2.4 requires each party to impose compliance obligations on, and "actively ensure" compliance by, any party with whom it contracts or enters into an arrangement to undertake covered work.

20. Section 5 requires the Workplace Relations Management Plan (WRMP) to describe how subcontractors will be selected, contractually required to comply, monitored and subject to enforcement. The successful contractor must also require compliance by parties with whom it contracts, to the extent applicable to those parties. [2]

[2] Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, Draft Implementation Guidelines, ss 2.2, 2.4 and 5.1–5.2, pp 3–5 and 9–11.

4.2 Flowing down standards is not the same as passing down project-wide responsibility

21. NHC accepts that relevant behavioural and compliance standards must operate throughout a project supply chain. A head contractor cannot credibly commit to a project-wide standard while allowing subcontractors to operate outside it.

22. However, passing a contractual obligation downstream does not transfer the practical ability to manage the underlying conduct or risk.

23. The practical risk is that broad compliance warranties and the obligation to "actively ensure" compliance will be implemented through blanket back-to-back clauses. This may occur even where a downstream party does not control:

    a. project-wide workplace-relations strategy;
    b. site-access and induction systems;
    c. reporting to the client agency or regulator;
    d. the conduct of other contractors or project participants;
    e. the interpretation and implementation of the head contractor's WRMP; or
    f. the information and systems needed to respond to an audit or investigation.

24. That risk is not created because the Draft Guidelines expressly state that every subcontractor assumes identical liability. They do not.

25. It arises because broad warranty language, "actively ensure" obligations and potentially serious commercial consequences create a strong incentive for contracting parties to transfer as much exposure as possible down the contractual chain.

26. This is a familiar commercial risk-allocation problem. Where risk is allocated to a party without the authority, information, resources or practical ability to manage it, the risk is not controlled. It is merely displaced.

27. The likely consequences include:

    a. duplicated compliance systems;
    b. unclear or fragmented accountability;
    c. unpriced or uninsurable contractual exposure;
    d. defensive contract administration;
    e. increased bid and mobilisation costs; and
    f. suppliers declining opportunities because the contractual exposure is disproportionate to the value of their package.

28. By way of illustration, a specialist subcontractor engaged for a relatively small package on a major project may properly be required to ensure that its own workforce complies with the Code, to maintain relevant records and to cooperate with monitoring. The difficulty arises if broad back-to-back drafting also makes that subcontractor responsible for project-wide site access, workplace-relations strategy, implementation of the head contractor's WRMP, reporting to the client agency, or the conduct of parties outside its contractual control.

29. In that circumstance, the subcontractor may carry contractual exposure for matters it cannot direct, investigate or correct. The obligation has been transferred, but the practical means of compliance have not. The likely commercial response is to price the exposure, qualify the tender or decline the opportunity.

30. Earlier code experience recorded in the Commission's stakeholder engagement report included concern about audit and reporting burdens, site-management time being

redirected into compliance checking, and audits removing personnel from productive delivery activity. [3]

31. These burdens may be manageable for a major contractor with dedicated industrial relations, legal, commercial and assurance functions. The same obligation may have a materially different effect on a regional contractor, specialist subcontractor, social enterprise or Aboriginal business with a small administrative team.

32. NHC does not suggest that the Draft Guidelines have already produced that outcome. The Guidelines are not yet in operation. The issue is a foreseeable implementation risk that can be addressed through clearer drafting and guidance before commencement.

[3] Commission of Inquiry, Stakeholder Engagement Report, Issue 4, pp 17–19. The report records stakeholder views, not findings of the Commission.

5. SCOPE, CLASSIFICATIONS AND THRESHOLDS

5.1 High Risk/Significant classifications should be defined and visible

33. The Draft Guidelines apply generally to publicly funded building and construction work exceeding $2 million.

34. For the purposes of section 5, the Draft Guidelines describe the formal WRMP requirement as applying to:

    a. building construction projects exceeding $10 million, including projects assessed as High Risk/Significant under the PQC System, or other building construction projects involving State Government funding exceeding $10 million; and
    b. road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding $20 million, including projects assessed by TMR as High Risk/Significant, or other civil construction projects involving State Government funding exceeding $20 million.

35. The Draft Guidelines do not define High Risk/Significant, identify the controlling assessment document, explain how that classification is made, state whether HRS status operates within or independently of the stated monetary thresholds, or explain how a tenderer can determine whether an individual project has received that classification.

36. Building-sector HRS guidance identifies a range of criteria, including procurement value, procurement model, bundled projects, PQC service-risk ratings and other risk elements.

37. The TMR material examined by NHC contains concepts including:

    a. significant procurement at $20 million and above;
    b. Major Project, Type 1, Type 2 and Type 3 classifications;
    c. risk context profiles; and
    d. technical and financial prequalification levels.

38. However, the material examined does not establish which TMR assessment or classification the Draft Guidelines intend to invoke by the expression “High Risk/Significant”.

39. NHC has also not identified, within the material examined, a public TMR register identifying individual projects classified as High Risk/Significant. NHC does not assert that no such register exists; only that the classification pathway is not evident from the Draft Guidelines and supporting material examined. [4]

40. This matters at the earliest stage of procurement. A supplier should be able to determine before investing in an opportunity:

    a. whether the Guidelines apply;
    b. whether a WRMP is required;
    c. what downstream requirements are likely to apply; and
    d. what resources and costs will be necessary to comply.

[4] Draft Implementation Guidelines, ss 2.1 and 5.1, pp 3 and 9–10; Queensland Government, High Risk/Significant (HRS) building projects, p 1; TMR, TIPDS Volume 1, ss 2.3.1, 7.2 and 8.1–8.4, pp 10 and 21–33; TIPDS Volume 3 – Requirements, ss 2.1–2.3, pp 3–5. Materials examined also included TMR, Contractor Prequalification Status as at 30 June 2026, and the Bruce Highway Targeted Safety Program panel list dated 8 April 2026.

41. Project classification should therefore be clearly stated in early market engagement, procurement pipelines, expressions of interest, tender documents and contract documents.

5.2 Program, project, package and subcontract values are not interchangeable

42. The Draft Guidelines refer variously to project value, State Government funding and projects assessed as HRS.

43. They do not expressly resolve whether the relevant financial measure is:

    a. total program value;
    b. total project value;
    c. the head-contract value;
    d. the value of an individual work package;
    e. the value of a subcontract; or
    f. cumulative government funding.

44. The Draft Guidelines also do not consistently state whether thresholds are inclusive or exclusive of GST. 5

45. This is significant for downstream suppliers. A $1 million specialist package may sit within a $500 million project. The Code may properly cover the overall project, but it does not follow that the specialist supplier has the same role, influence or systems obligations as the project head contractor.

46. The relevant implementation question is therefore not merely:

    Is the overall project above the threshold?

47. It is also:

    Which obligations attach because the overall project is covered, and which obligations attach according to the individual supplier's role, package, workforce, risk profile and degree of control?

[5] Draft Implementation Guidelines, ss 2.1 and 5.1, pp 3 and 9–10; TMR, TIPDS Volume 1, Table 2.3.3 and accompanying note, p 12.

6. PROPORTIONALITY AND SUPPLIER EVIDENCE

48. The Draft Guidelines contain commercially material requirements relating to warranties, monitoring access, document production, reporting, tender declarations, subcontractor monitoring and enforcement. [6]

49. The available material does not demonstrate how these obligations will be scaled across parties with materially different:

    a. contractual roles;
    b. package values;
    c. workforce sizes;
    d. organisational systems;
    e. risk profiles; and
    f. levels of practical control.

50. NHC does not submit that the Draft Guidelines will necessarily have a disproportionate effect on smaller and diverse suppliers. There is presently no quantitative evidence before NHC establishing the relative compliance cost by supplier type.

51. The absence of that evidence is itself a reason to build proportionality into the framework and monitor its practical effect after implementation.

52. Smaller or emerging suppliers may also lack an extensive history on projects of equivalent scale, even where they possess capable personnel, relevant experience, sound governance and a credible mobilisation plan.

53. A capable regional, Aboriginal or emerging supplier may have experienced personnel, sound safety and quality systems, successful delivery of comparable work packages and a credible mobilisation plan, but no corporate history of delivering a project equivalent in value to the overall head contract.

54. If capability is assessed primarily by reference to whole-project value or previous corporate delivery at that scale, the supplier may remain formally eligible yet be unable to demonstrate its capability in the form expected. Assessing comparable package experience, the experience of key personnel and a supported mobilisation plan would test the relevant delivery risk more accurately without lowering the required standard.

55. The Guidelines should therefore allow equivalent and proportionate evidence pathways, including: [7]

    a. experience of key personnel;
    b. performance on comparable work packages rather than whole projects;
    c. supported mobilisation or capability-development plans;
    d. existing certifications, prequalification and recognised management systems;
    e. evidence supplied through a parent, partner or delivery consortium where appropriate; and
    f. staged controls proportionate to the supplier's role and contract value.

56. This would not lower the standard. It would allow the same outcome to be demonstrated in a way that reflects the supplier's actual role and delivery model.

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[6] Draft Implementation Guidelines, ss 2.2–2.4, 5.1–5.2 and 10, pp 3–5, 9–11 and 16.

[7] TMR, *Transport Infrastructure Project Delivery System (TIPDS), Volume 3 – Requirements* (November 2024), s 3.3, p 6; Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, *Draft Implementation Guidelines*, s 5.1(o)–(p), p 10.

7. COMMONWEALTH AND QUEENSLAND INTERACTION

57. Counsel Assisting proposes deleting the reference to the former Federal Building Code because no equivalent federal building code is presently in force.
58. NHC supports removing obsolete references. However, the future interaction between Queensland and Commonwealth procurement requirements remains unresolved, particularly for jointly or indirectly funded projects.
59. Commonwealth consultation material examined during NHC's review identifies questions concerning:
    a. unnecessary duplication or overlap;
    b. administrative burden on suppliers and procurement officials;
    c. financial thresholds;
    d. application to subcontractors;
    e. head-contractor responsibility; and
    f. work delivered through states, territories and local government.
60. There is not yet a settled Commonwealth instrument against which inconsistency can be conclusively tested.
61. NHC therefore does not submit that the proposed Queensland and Commonwealth frameworks currently create duplicate or contradictory obligations.
62. The appropriate conclusion is prospective:

    Different thresholds, evidence requirements, reporting arrangements and flow-down obligations could create cumulative administrative burdens unless the frameworks are coordinated before commencement.[8]

63. Any final Queensland framework should contain a mechanism for recognising equivalent Commonwealth compliance and avoiding duplicate plans, declarations, audits and evidence submissions wherever the underlying requirement is substantially the same.

[8] Counsel Assisting's further submissions (3 July 2026), [68(a)], p 20; Australian Government, Secure Australian Jobs Code Consultation Paper (December 2025), pp 5–12; Department of Employment and Workplace Relations, Secure Australian Jobs Code webpage (accessed 16 July 2026).

8. RECOMMENDATIONS

64. NHC recommends that, if the proposed framework is introduced, the final Guidelines include the following implementation safeguards.

Recommendation 1 — Express proportionality principle

65. Insert an overarching provision stating that obligations imposed on a downstream party must be proportionate to:
    a. its role and scope of work;
    b. contract or package value;
    c. workforce size and composition;
    d. the relevant risk; and
    e. its practical ability to control or influence the conduct.

Recommendation 2 — Controlled and relevant flow-down

66. Clarify that head contractors must flow down applicable standards, but must not transfer responsibility for project-wide systems or outcomes to a party that does not control them.
67. Downstream contractual provisions should identify:
    a. the specific obligations applicable to the supplier;
    b. the evidence required;
    c. the information and access the head contractor will provide;
    d. reporting and escalation pathways; and
    e. the responsibilities retained by the head contractor.

Recommendation 3 — Replace or qualify "actively ensure"

68. Amend the requirement to "require and actively ensure compliance" by replacing it with, or defining it to mean, an obligation to take reasonable and proportionate steps to require, support, monitor and respond to non-compliance.
69. This would preserve active responsibility without creating an apparent absolute warranty over conduct beyond the party's control.

Recommendation 4 — Define and disclose coverage

70. Define High Risk/Significant for both PQC and TMR projects by reference to identified and current assessment instruments.
71. State clearly:
    a. the relevant financial threshold;
    b. whether the amount includes GST;
    c. whether it applies to program, project, head contract or package value;
    d. how bundled or staged projects are treated; and
    e. where and when the classification will be disclosed, including in early market engagement, forward procurement pipelines, expressions of interest, tender documents and contract documents.

Recommendation 5 — Role-specific guidance and model clauses

72. Require the regulator or administering body to publish plain-English guidance, model clauses and evidence checklists for:
    a. client agencies;
    b. head contractors;

c. subcontractors;
d. consultants;
e. suppliers; and
f. smaller and emerging businesses.

73. Model clauses should distinguish between compliance with a relevant standard and responsibility for operating the project-wide compliance framework.

Recommendation 6 — Equivalent evidence pathways

74. Allow suppliers to demonstrate capability and compliance through proportionate and equivalent evidence, rather than relying only on extensive prior corporate project history.

Recommendation 7 — Education, remediation and graduated sanctions

75. Except in cases involving serious, deliberate, repeated or unlawful conduct, provide an opportunity to clarify, correct or remediate administrative non-compliance before commercial sanctions or tender exclusion are imposed.
76. Publish a transparent, graduated sanctions and escalation framework that distinguishes administrative non-compliance from serious, deliberate, repeated or unlawful conduct and ensures that the consequence is proportionate to the nature and seriousness of the breach.[9]

Recommendation 8 — Commonwealth equivalence mechanism

77. Include a mechanism allowing equivalent Commonwealth plans, audits, declarations and evidence to satisfy Queensland requirements where the underlying obligation is materially equivalent.

Recommendation 9 — Monitor supplier-pathway effects

78. Include supplier participation and market-access measures in the formal review of the Code.
79. Measures should include:
    a. number and value of tenders submitted by SMEs, regional suppliers, social enterprises and Aboriginal and Torres Strait Islander businesses;
    b. bid and compliance costs;
    c. reasons suppliers decline to tender;
    d. use of blanket flow-down clauses;
    e. audit and reporting hours by supplier size;
    f. market concentration and competition; and
    g. exclusion, remediation and sanction outcomes by supplier category.

[9] Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry, *Draft Implementation Guidelines*, s 10, p 16.

9. CONCLUSION

80. NHC supports clear standards of lawful conduct, safety, integrity, probity, productivity and accountability in government-funded construction.
81. NHC's concern is not that smaller or diverse suppliers should be exempt from those standards.
82. NHC submits that the implementation framework should not unintentionally confuse formal eligibility with practical access.
83. Queensland's procurement framework already recognises that prequalification establishes eligibility only. Access to an opportunity remains dependent on further project, tender, capacity, evidence and contractual requirements.
84. The same discipline should be applied to the proposed Guidelines.
85. In particular:

    Passing an obligation downstream does not transfer the practical ability to manage it.

86. Compliance is strengthened when responsibility is placed with the party that holds the relevant information, authority and control. It is weakened when project-wide risk is transferred contractually to parties that cannot manage the underlying conduct.
87. Clear classifications, proportionate obligations, controlled flow-down, equivalent evidence pathways and role-specific guidance would preserve the intended standards while supporting a broader and more capable supply market.
88. These safeguards would also align with existing Queensland objectives concerning competition, local participation, SME access and Aboriginal and Torres Strait Islander procurement.[10]
89. Formal eligibility does not necessarily create a usable supplier pathway. The final framework should be designed and reviewed with that distinction expressly in mind.



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[10] TMR, *TIPDS Volume 1* (March 2025), s 3, p 13 and ss 2.3.1–2.4 and 8.4, pp 9–12 and 33; Queensland Government, *Queensland Code of Practice for the Building and Construction Industry* (March 2025), ss 1.3 and 4.2.